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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,750	10/16/2003	Glenn W. Melzer	CHA920030029US1	8709
23550 7590 05/01/2007 HOFFMAN WARNICK & D'ALESSANDRO, LLC 75 STATE STREET 14TH FLOOR ALBANY, NY 12207			EXAMINER NELSON, FREDA ANN	
			ART UNIT 3628	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/686,750	<b>Applicant(s)</b> MELZER, GLENN W.	
	<b>Examiner</b> Freda A. Nelson	<b>Art Unit</b> 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-19, 22-30 and 33-35 is/are rejected.
- 7) ☒ Claim(s) 7-8, 20-21, and 31-32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This is in response to a letter for a patent filed October 16, 2003 in which claims 1–35 were presented for examination. Claims 1-35 are pending.

### **Information Disclosure Statement**

The information disclosure statements (IDSs) submitted on 10/16/2003 and 12/08/03 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner. Copies of PTO-1449s are attached.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- 1. Claims 27-35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

See detailed discussion below.

As the Supreme Court held, Congress chose the expansive language of 35 U.S.C. § 101 so as to include “anything under the sun that is made by man.” *Diamond v. Chakrabarty*, 447 U.S. 303, 308-09, 206 USPQ 193, 197 (1980). In *Chakrabarty*, 447 U.S. at 308-309, 206 USPQ at 197, the court stated:

In choosing such expansive terms as “manufacture” and “composition of matter,” modified by the comprehensive “any,” Congress plainly contemplated

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that the patent laws would be given wide scope. The relevant legislative history also supports a broad construction. The Patent Act of 1793, authored by Thomas Jefferson, defined statutory subject matter as "any new and useful art, machine, manufacture, or composition of matter, or any new or useful improvement [thereof]." Act of Feb. 21, 1793, ch. 11, § 1, 1 Stat. 318. The Act embodied Jefferson's philosophy that "ingenuity should receive a liberal encouragement." V Writings of Thomas Jefferson, at 75-76. See *Graham v. John Deere Co.*, 383 U.S. 1, 7-10 (148 USPQ 459, 462-464) (1966). Subsequent patent statutes in 1836, 1870, and 1874 employed this same road language. In 1952, when the patent laws were recodified, Congress replaced the word "art" with "process," but otherwise left Jefferson's language intact. The Committee Reports accompanying the 1952 Act inform us that Congress intended statutory subject matter to "include anything under the sun that is made by man." S. Rep. No. 1979, 82d Cong., 2d Sess., 5 (1952); H.R. Rep. No. 1923, 82d Cong., 2d Sess., 6 (1952). [Footnote omitted]

This perspective has been embraced by the Federal Circuit:

The plain and unambiguous meaning of section 101 is that any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may be patented if it meets the requirements for patentability set forth in Title 35, such as those found in sections 102, 103, and 112. The use of the expansive term "any" in section 101 represents Congress's intent not to place any restrictions on the subject matter for which a patent may be obtained beyond those specifically recited in section 101 and the other parts of Title 35.... Thus, it is improper to read into section 101 limitations as to the subject matter that may be patented where the legislative history does not indicate that Congress clearly intended such limitations.

*Alappat*, 33 F.3d at 1542, 31 USPQ2d at 1556.

35 U.S.C. § 101 defines four categories of inventions that Congress deemed to be the appropriate subject matter of a patent: processes, machines, manufactures and compositions of matter.

Federal courts have held that 35 U.S.C. § 101 does have certain limits. First, the phrase "anything under the sun that is made by man" is limited by the text of 35 U.S.C. § 101, meaning that one may only patent something that is a machine, manufacture,

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composition of matter or a process. See, e.g., *Alappat*, 33 F.3d at 1542, 31 USPQ2d at 1556; *In re Warmerdam*, 33 F.3d 1354, 1358, 31 USPQ2d 1754, 1757 (Fed. Cir. 1994). Second, 35 U.S.C. § 101 requires that the subject matter sought to be patented be a “useful” invention. Accordingly, a complete definition of the scope of 35 U.S.C. § 101, reflecting Congressional intent, is that any new and useful process, machine, manufacture or composition of matter under the sun that is made by man is the proper subject matter of a patent.

The subject matter courts have found to be outside of, or exceptions to, the four statutory categories of invention is limited to abstract ideas, laws of nature and natural phenomena. These three exclusions recognize that subject matter that is not a practical application or use of an idea, a law of nature or a natural phenomenon is not patentable. See, e.g., *Rubber-Tip Pencil Co. v. Howard*, 87 U.S. (20 Wall.) 498, 507 (1874) (“idea of itself is not patentable, but a new device by which it may be made practically useful is”); *Mackay Radio & Telegraph Co. v. Radio Corp. of America*, 306 U.S. 86, 94, 40 USPQ 199, 202 (1939) (“While a scientific truth, or the mathematical expression of it, is not patentable invention, a novel and useful structure created with the aid of knowledge of scientific truth may be.”); *Warmerdam*, 33 F.3d at 1360, 31 USPQ2d at 1759 (“steps of ‘locating’ a medial axis, and ‘creating’ a bubble hierarchy . . . describe nothing more than the manipulation of basic mathematical constructs, the paradigmatic ‘abstract idea’”).

The courts have also held that a claim may not preempt ideas, laws of nature or natural phenomena. The concern over preemption was expressed as early as 1852.

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See *Le Roy v. Tatham*, 55 U.S. (14 How.) 156, 175 (1852) (“A principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right.”); *Funk Bros. Seed Co. v. Kalo Inoculant Co.*, 333 U.S. 127, 132, 76 USPQ 280, 282 (1948) (combination of six species of bacteria held to be nonstatutory subject matter). Accordingly, one may not patent every “substantial practical application” of an idea, law of nature or natural phenomena because such a patent “in practical effect be a patent on the [idea, law of nature or natural phenomena] itself.” *Gottschalk v. Benson*, 409 U.S. 63, 71-72, 175 USPQ 673, 676 (1972).

A claim that requires one or more acts to be performed defines a process. The applicant’s invention is directed to a method or a process and thus falls within an enumerated statutory class.

However, not all processes are statutory under 35 USC Section 101. To be statutory, a claimed process must either: (A) result in a physical transformation which a practical application is either disclosed in the specification or would have been known to a skilled artisan, or (B) be limited to a practical application which produces a useful, tangible, and concrete result. See *Diehr*, 450 U.S. at 183-84, 209 USPQ at 6.

Upon making the determination that the invention is a method or process that falls within an enumerated statutory class, the Examiner must now determine whether the claimed invention falls within one of the Section 101 judicial exceptions, i.e., is the invention directed to laws of nature, natural phenomena or an abstract idea. Moreover, in evaluating whether the claims meet the requirements of section 101, the Supreme

Court requires the Examiner to consider the claims as a whole to determine whether the invention is for a particular application of an abstract idea, rather than an abstract idea itself.

**Exceptions: Laws of nature, natural Phenomena and Abstract Ideas:**

Inventions directed to nothing more than abstract ideas (such as mathematical algorithms), natural phenomena, and laws of nature are not eligible and therefore are excluded from patent protection. *Diehr*, 450 U.S. at 185, 209 USPQ at 7; accord, e.g., *Chakrabarty*, 447 U.S. at 309, 206 USPQ at 197; *Parker v. Flook*, 437 U.S. 584, 589, 198 USPQ 193, 197 (1978); *Benson*, 409 U.S. at 67-68, 175 USPQ at 675; *Funk*, 333 U.S. at 130, 76 USPQ at 281. “A principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right.” *Le Roy*, 55 U.S. (14 How.) at 175. Instead, such “manifestations of laws of nature” are “part of the storehouse of knowledge,” “free to all men and reserved exclusively to none.” *Funk*, 333 U.S. at 130, 76 USPQ at 281.

Thus, “a new mineral discovered in the earth or a new plant found in the wild is not patentable subject matter” under Section 101. *Chakrabarty*, 447 U.S. at 309, 206 USPQ at 197. “Likewise, Einstein could not patent his celebrated law that  $E=mc^2$ ; nor could Newton have patented the law of gravity.” *Ibid*. Nor can one patent “a novel and useful mathematical formula,” *Flook*, 437 U.S. at 585, 198 USPQ at 195; electromagnetism or steam power, *O'Reilly v. Morse*, 56 U.S. (15 How.) 62, 113-114 (1853); or “[t]he

qualities of \* \* \* bacteria, \* \* \* the heat of the sun, electricity, or the qualities of metals,” Funk, 333 U.S. at 130, 76 USPQ at 281; see Le Roy, 55 U.S. (14 How.) at 175.

While abstract ideas, natural phenomena, and laws of nature are not eligible for patenting, methods and products employing abstract ideas, natural phenomena, and laws of nature to perform a real-world function may well be. In evaluating whether a claim meets the requirements of section 101, the claim must be considered as a whole to determine whether it is for a particular application of an abstract idea, natural phenomenon, or law of nature, rather than for the abstract idea, natural phenomenon, or law of nature itself.

**Determine Whether the Claimed Invention Covers Either a § 101 Judicial Exception or a Practical Application of a § 101 Judicial Exception**

The Examiner must ascertain the scope of the claim to determine whether it covers either a § 101 judicial exception or a practical application of a § 101 judicial exception. The conclusion that a particular claim includes a § 101 judicial exception does not end the inquiry because “[i]t is now commonplace that an application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.” Diehr, 450 U.S. at 187, 209 USPQ at 8 (emphasis in original); accord Flook, 437 U.S. at 590, 198 USPQ at 197; Benson, 409 U.S. at 67, 175 USPQ at 675. Thus, “[w]hile a scientific truth, or the mathematical expression of it, is not a patentable invention, a novel and useful structure created with the aid of knowledge of scientific truth may be.” Diehr, 450 U.S. at 188, 209 USPQ at 8-9 (quoting Mackay, 306 U.S. at



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94); see also *Corning v. Burden*, 56 U.S. (15 How.) 252, 268, 14 L.Ed. 683 (1854) (“It is for the discovery or invention of some practical method or means of producing a beneficial result or effect, that a patent is granted . . .”).

In light of the specification, it appears that the applicant is directing the invention to a system and method for automatically setting pricing for resellers requesting a special price from a wholesaler.

Assuming this is correct, the Examiner asserts that the applicant’s invention is directed to an abstract idea. The Examiner now must determine if the applicant’s invention is a particular application of an abstract idea.

**Determine Whether the Claimed Invention is a Practical Application of an  
Abstract Idea, Law of Nature, or Natural Phenomenon (§ 101 Judicial  
Exceptions)**

For claims including such excluded subject matter to be eligible, the claim must be for a practical application of the abstract idea, law of nature, or natural phenomenon. *Diehr*, 450 U.S. at 187, 209 USPQ at 8 (“application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”); *Benson*, 409 U.S. at 71, 175 USPQ at 676 (rejecting formula claim because it “has no substantial practical application”).

To satisfy section 101 requirements, the claim must be for a practical application of the § 101 judicial exception, which can be identified in various ways:

- (a). The claimed invention “transforms” an article or physical object to a different state or thing.

(b) The claimed invention otherwise produces a useful, concrete and tangible result, based on the factors discussed below.

**a. Practical Application by Physical Transformation**

The applicant's invention does not transform an article or physical object to a different state or thing. Transferring goods allows the goods to remain in the same state, albeit allowing them to change physical locations.

**b. Practical Application That Produces a Useful, Concrete, and Tangible Result**

For eligibility analysis, physical transformation "is not an invariable requirement, but merely one example of how a mathematical algorithm [or law of nature] may bring about a useful application." AT&T, 172 F.3d at 1358-59, 50 USPQ2d at 1452. Since the Examiner determined that the claims do not entail the transformation of an article, the Examiner must review the claim to determine if the claim provides a practical application that produces a useful, tangible and concrete result. In determining whether the claim is for a "practical application," the focus is not on whether the steps taken to achieve a particular result are useful, tangible and concrete, but rather that the final result achieved by the claimed invention is "useful, tangible and concrete." The claim must be examined to see if it includes anything more than a § 101 judicial exception. If the claim is directed to a practical application of the § 101 judicial exception producing a result tied to the physical world that does not preempt the judicial exception, then the claim meets the statutory requirement of 35 U.S.C. § 101. If the examiner does not find such a practical application, the examiner has determined that the claim is nonstatutory. In

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determining whether a claim provides a practical application that produces a useful, tangible, and concrete result, the examiner considers and weighs the following factors:

### **“USEFUL RESULT”**

For an invention to be “useful” it must satisfy the utility requirement of section 101. The USPTO’s official interpretation of the utility requirement provides that the utility of an invention has to be (i) specific, (ii) substantial and (iii) credible. MPEP § 2107 and Fisher, 421 F.3d at \_\_\_, 76 USPQ2d at 1230 (citing the Utility Guidelines with approval for interpretation of “specific” and “substantial”).

The Examiner asserts that the applicant’s invention has a specific, substantial and credible result and thus produces a useful result.

### **“TANGIBLE RESULT”**

The tangible requirement does not necessarily mean that a claim must either be tied to a particular machine or apparatus or must operate to change articles or materials to a different state or thing. However, the tangible requirement does require that the claim must recite more than a § 101 judicial exception, in that the process claim must set forth a practical application of that § 101 judicial exception to produce a real-world result. Benson, 409 U.S. at 71-72, 175 USPQ at 676-77 (invention ineligible because had “no substantial practical application.”). “[A]n application of a law of nature or mathematical formula to a ... process may well be deserving of patent protection.” Diehr, 450 U.S. at 187, 209 USPQ at 8 (emphasis added); see also Corning, 56 U.S.

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(15 How.) at 268, 14 L.Ed. 683 (“It is for the discovery or invention of some practical method or means of producing a beneficial result or effect, that a patent is granted . . .”).

In other words, the opposite meaning of “tangible” is “abstract.”

The Examiner asserts that the method claim does not produce a real-world result, or beneficial effect and thus has no substantial application. The invention as claimed is either directed to a transfer goods, which does not result in a physical transformation or reduction of the goods to a different state or thing, or the invention identifies a mathematical algorithm, and thus is directed to an abstract idea.

### **“CONCRETE RESULT”**

Another consideration is whether the invention produces a “concrete” result. Usually, this question arises when a result cannot be assured. In other words, the process must have a result that can be substantially repeatable or the process must substantially produce the same result again. In re Swartz, 232 F.3d 862, 864, 56 USPQ2d 1703, 1704 (Fed. Cir. 2000) (where asserted result produced by the claimed invention is “irreproducible” claim should be rejected under section 101). The opposite of “concrete” is unrepeatable or unpredictable. Resolving this question is dependent on the level of skill in the art.

The Examiner asserts that the applicant’s invention is repeatable or predictable.

### **Determine Whether the Claimed Invention Preempts an Abstract Idea, Law of Nature, or Natural Phenomenon (§ 101 Judicial Exceptions)**

Even when a claim applies a mathematical formula, for example, as part of a seemingly patentable process, the examiner must ensure that it does not in reality “seek[] patent protection for that formula in the abstract.” Diehr, 450 U.S. at 191, 209 USPQ at 10. “Phenomena of nature, though just discovered, mental processes, abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work.” Benson, 409 U.S. at 67, 175 USPQ at 675. One may not patent a process that comprises every “substantial practical application” of an abstract idea, because such a patent “in practical effect would be a patent on the [abstract idea] itself.” Benson, 409 U.S. at 71-72, 175 USPQ at 676; cf. Diehr, 450 U.S. at 187, 209 USPQ at 8 (stressing that the patent applicants in that case did “not seek to pre-empt the use of [an] equation,” but instead sought only to “foreclose from others the use of that equation in conjunction with all of the other steps in their claimed process”). “To hold otherwise would allow a competent draftsman to evade the recognized limitations on the type of subject matter eligible for patent protection.” Diehr, 450 U.S. at 192, 209 USPQ at 10. Thus, a claim that recites a computer that solely calculates a mathematical formula (see Benson) or a computer disk that solely stores a mathematical formula is not directed to the type of subject matter eligible for patent protection.

The applicant’s invention is effectively directed to an abstract idea.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**2. Claims 1-4, 11-12, 14-17, 24-25, 27-28, and 34 are rejected under 35**

**U.S.C. 102(e) as being anticipated by Habiby et al. (US PG Pub. 2003/0033215).**

As per claims 1, 14, and 27-28, Habiby et al. discloses a wholesale discount pricing system for calculating a special wholesale pricing between a wholesaler and a reseller for a transaction between the reseller and an end-user, comprising:

a system for inputting a special pricing request from a reseller, wherein the special pricing request includes a product identifier and an end-user discount the reseller intends on applying to the transaction with the end-user (paragraph [0040]);

a product mapping system that maps the product identifier to a set of pricing parameters (paragraph [0101]); and

a calculation system that calculates the special wholesale pricing based on the set of pricing parameters and the inputted end-user discount (paragraphs [0083]-[0084],[0109]).

As per claims 2 and 15, Habiby et al. discloses the wholesale discount pricing system of claim 1, wherein the end-user discount comprises a percentage of a list price for the transaction (paragraph [0109]).

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As per claims 3 and 16, Habiby et al. discloses the wholesale discount pricing system of claim 2, wherein the list price is included in the special pricing request (paragraph [0104]).

As per claims 4 and 17, Habiby et al. discloses the wholesale discount pricing system of claim 3, wherein the transaction comprises a sale of a product (paragraph [0111]).

As per claims 11, 24, and 34, Habiby et al. discloses the wholesale discount pricing system of claim 1, further comprising an approval documentation generation system for generating an approval document if the special wholesale pricing is approved by the calculation system (paragraph [0110]-[0112]).

As per claims 12 and 25, Habiby et al. discloses the wholesale discount pricing system of claim 11, wherein the approval document includes:

a description of the transaction (paragraphs [0081]-[0087]);  
legal terms and conditions (paragraph [0081]-[0087]); and  
details of the special wholesale pricing (paragraphs [0081]-[0087]).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**3. Claims 5-6, 18-19, and 29-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Habiby et al. (US PG Pub. 2003/0033215), in view of Carter, III (US Patent Number 5,878,400).**

As per claims 5-6, 18-19, and 29-30, Habiby et al. does not expressly disclose wherein the set of pricing parameters includes an entitled discount, a maximum discount, a start margin and an end margin; and

wherein a procedure is used to calculate the special wholesale pricing that includes:

a first routine for handling the case where the end-user discount is less than the start margin;

a second routine for handling the case where the end-user discount is greater than the start margin, but less than the end margin; and

a third routine for handling the case where the end-user discount is greater than the end margin.

However, Carter, III discloses the sample sequence shown in column 718, the Maximum Discount is the first applicable operation; for example, the Maximum Discount can be 50%. In the sample sequence shown in column 718, the Maximum Discount is followed by the Base Cost and since Base Cost is an override operation, the Maximum Discount is automatically overridden by the Base Cost. Thus, if the Base Cost is \$80.00, the number 80.00 overrides the number 0.5 (i.e. 50%). Nevertheless, the



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number corresponding to the Maximum Discount (i.e. 0.5) is stored for informational purposes and for example, the Maximum Discount may be used to override a total discount that exceeds the Maximum Discount. Alternatively, the Maximum Discount may be used as a flag to prevent sale of a product at a discount that exceeds the Maximum Discount. The numerical value assigned to the Maximum Discount pricing type (in this example, 0.5) can be thought of as a denormalized number discussed in relation with FIG. 5. In other words, the significance of this number (in this example, 0.5) is determined during run time. The numerical value assigned to a Maximum Discount pricing type is not used in an addition, subtraction, or multiplication operation. However, the numerical value of the Maximum Discount is used in a comparison operation to ensure that the net result of all discounts applied to a particular product does not exceed a certain limit (i.e. the limit set by the Maximum Discount pricing type) (col. 14, line 59-col. 15, line 23).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Habiby et al. to include the feature of Carter, III in order to provide a sequence of pricing constraints to maximize profits.

**4. Claims 9-10, 22-23, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Habiby et al. (US PG Pub. 2003/0033215), in view of Carter, III (US Patent Number 5,878,400), still in further view of Chaves (US PG Pub. 2002/0010643).**

As per claims 9-10, 22-23, and 33, Habiby et al. does not expressly disclose, wherein the special pricing request further includes a special bid code; and a bid code processing system that maps the bid code to a margin adjustment and generates a revised start margin and end margin, and inputs the revised start margin and end margin into the calculation system

However, Chaves disclose these options (product(s) or service(s)) along with accompanying discount(s) may be individually deleted or retrieved by the shopper as the process unfolds. The net pricing (with discount(s)) for additional items will reflect not just the immediate value (profit) of the item to the dealership, but more importantly where applicable, the added values to be derived from inherent return visits to the dealership (paragraph [0277]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Habiby et al. and Carter, III to include the feature of Chaves to provide the users the ability to bid of wholesale products.

**5. Claims 13, 26, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Habiby et al. (US PG Pub. 2003/0033215), in view of Nowers et al. (US PG Pub. 2003/0033205).**

As per claims 13, 26, and 35, Habiby et al. does not expressly disclose the wholesale discount pricing system, further comprising an audit system for ensuring compliance with the details of the special wholesale pricing.

However, Nowers et al. discloses through the ETS, vendors establish rules of exchange that govern the manner by which their products must be offered for sale by Internet retailers, wherein the ETS allows branded vendors and Internet retailers to reach agreements concerning the manner by which branded goods are to be sold through electronic storefronts; and electronic commercial transactions between Internet retailers and their customers are received by the ETS allowing the transactions to be checked for compliance with agreed upon rules of exchange. In this manner, brand integrity can be maintained and channel conflicts between on-line Internet retailers and conventional "bricks and mortar" retailers of brand name goods can be avoided (paragraph [0075]). Nowers et al. further discloses when an Internet retailer 24 becomes an authorized reseller for a vendor, the Internet retailer can buy the vendor's products at a wholesale price and is free to sell the vendor's products at whatever price the Internet retailer decides, so long as the Internet retailer complies with other aspects of the rules of exchange; and when an Internet retailer becomes a sales agent for a vendor, the Internet retailer may sell the vendor's products on behalf of the vendor, so long as the Internet retailer complies with, among other things, the pricing policies that form part of the rules of exchange established by the vendor (paragraph [0096]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Habiby et al. to include the features of Nowers et al. in order to provide compliance and integrity of the system.

***Allowable Subject Matter***

Claims 7-8, 20-21, and 31-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**6. The examiner has cited prior art of interest, for example:**

1) Roll et al. (US PG Pub. 2002/0016779), which disclose a method and system of providing competitive comparative terms to the user.

2) Wang et al. (US PG Pub. 2001/0049657), which disclose a method, apparatus and system of merchandise hierarchical online ordering, billing and distribution.

3) Langhammer (US PG Pub. 2002/0099622), which discloses a merchant-affiliated direct wholesale marketing and fulfillment system.

4) Groff et al. (US PG. Pub. 2005/0080635), which disclose a direct distribution system for consumer goods and services.

5) Bigus et al. (US Patent Number 6,401,080), which disclose an intelligent agent with negotiation capability and method of negotiation therewith.

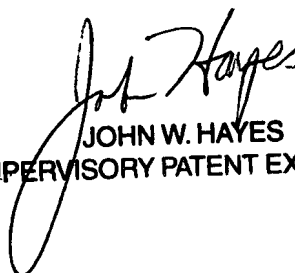
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday, 10 am- 6:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FAN 04/28/2007

A handwritten signature in cursive script, appearing to read "Freda Nelson".A handwritten signature in cursive script, appearing to read "John W. Hayes".  
**JOHN W. HAYES**  
**SUPERVISORY PATENT EXAMINER**